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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 26 August 1992, at 10 a.m.

Chairman: Mr. ALFONSO MARTINEZ

later: Mr. SACHAR

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GE.92-13730 (E)

The meeting was called to order at 10.05 a.m.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued) (E/CN.4/Sub.2/1992/3 and Add.1; E/CN.4/Sub.2/1991/16; E/CN.4/1992/46)

1. Mr. BOSSUYT said that, in his draft proposal on the methods of consideration of violations of human rights in the Sub-Commission (E/CN.4/Sub.2/1992/3/Add.1), Mr. Chernichenko was recommending a number of measures designed to facilitate the task of the members of the Sub-Commission. The work of the Sub-Commission was now so wide-ranging that the experts had difficulty in reading all the documents and finding time for dialogue and consultation. Mr. Chernichenko first of all proposed that, when considering violations of human rights, the Sub-Commission should take into account the fact that the references to human rights violations in specific countries in the deliberations under other agenda items would and should be kept to a minimum and should have no purpose other than to serve as illustrations. That measure concerned non-governmental organizations taking the floor under various agenda items to denounce the same Government. It would, however, require the Chair to exercise discretionary powers and might be difficult to put into practice. A simpler solution would be to require each non-governmental organization to limit its statements to two or three per session.

2. In his second proposal, Mr. Chernichenko recommended that the Sub-Commission should refrain from adopting resolutions concerning situations in specific countries if those situations were the subject of consideration in closed meetings, in accordance with Economic and Social Council resolution 1503 (XLVIII). It would be better not to adopt such a measure, which might encourage some countries to take advantage as long as possible of the confidential procedure provided for in that resolution to prevent certain situations from being made public. Instead, consideration of the human rights situation in a specific country should not be continued under the confidential procedure when that situation was the subject of a public procedure.

3. In his third proposal, Mr. Chernichenko recommended that the Sub-Commission should refrain from adopting resolutions concerning those countries whose situations were being studied by a special rapporteur of the Commission on Human Rights. That proposal deserved the Sub-Commission's full attention since it would make it possible to limit the number of resolutions.

4. Lastly, Mr. Chernichenko recommended that, as a first step in the preparation of the global report on violations of human rights, the Sub-Commission should devote its efforts to drafting a resolution of a general character on the most typical human rights violations which were the subject of its discussions. In his view, such a report would be extremely difficult to prepare, since it would require far too much time and other resources that were not available to the Sub-Commission.

5. In conclusion, he was convinced that the Sub-Commission should proceed on the basis of the guidelines it had adopted concerning its methods of work (E/CN.4/Sub.2/1992/L.15) and in particular that it should continue to review some of Mr. Chernichenko's recommendations the following year.

6. Mr. HATANO said that he had some reservations to make concerning Mr. Chernichenko's second recommendation. It was not very clear whether situations that were "the subject of consideration in closed meeting" meant situations transmitted to the Working Group on Communications by the Centre for Human Rights, situations transmitted to the Sub-Commission by the Working Group, situations kept pending in the Working Group or situations that the Sub-Commission had decided to refer to the Commission. Furthermore, what was the position with regard to situations kept pending in the Sub-Commission?

7. Mr. Chernichenko understandably wished to avoid the risk of exposing a State to double jeopardy (non bis in idem), as well as any duplication between the closed and public proceedings. If it was applied, however, Mr. Chernichenko's proposal would have a serious drawback. If the Sub-Commission were to refrain from adopting a resolution concerning the situation in a country which, in everyone's view, revealed a consistent pattern of gross violations of human rights, it would in so doing admit that the situation was under consideration in closed meeting and thus infringe the principle of confidentiality. In that connection, he referred to the allegations made by the observer for Turkey that the confidentiality of the procedure provided for in resolution 1503 (XLVIII) had already been violated. If so, that failing was most regrettable.

PROTECTION OF MINORITIES (agenda item 18) (E/CN.4/Sub.2/1992/37 and Add.1 and 2; E/CN.4/Sub.2/1992/NGO/17; E/CN.4/Sub.2/1991/43; E/CN.4/Sub.2/1992/48 and Corr.1 and 2)

8. Mr. CISSE (Representative of the Secretariat), introducing agenda item 18, said that the Sub-Commission's main contributions to the protection of minorities had been its participation in the drafting of article 27 of the International Covenant on Civil and Political Rights and the study on the question of minorities prepared in 1977 by the Special Rapporteur, Mr. Capotorti. In deciding, in 1989, to consider the question of minorities under a separate agenda item, the Sub-Commission had indicated the great importance it attached to that problem. At its forty-first session, by its resolution 1989/44, it had decided to entrust Mr. Eide with the preparation of a report on national experience in the field of the protection of minorities and that decision had been approved by the Commission on Human Rights in its decision 1990/105.

9. The Sub-Commission had requested the Special Rapporteur to submit to it, at the current session, an updated report on possible ways and means of facilitating the peaceful and constructive solution of problems involving racial, national, religious and linguistic minorities, as well as a final report at its forty-fifth session. By its decision 1992/112, the Commission on Human Rights had endorsed the Sub-Commission's requests. At its current session, the Sub-Commission had before it the second progress report prepared by Mr. Eide (E/CN.4/Sub.2/1992/37/Add.1 and 2). In that connection, it should be noted that, pursuant to Sub-Commission resolution 1991/22 and Commission resolution 1991/62, the Secretary-General, in cooperation with the Special Rapporteur, would organize a technical meeting of experts on minorities, to be held in December 1992. It should also be pointed out that, by its resolution 1992/16, the Commission had approved the text of the draft declaration on the rights of persons belonging to national, ethnic, religious

and linguistic minorities prepared by its open-ended working group and that, by its resolution 1992/4, the Economic and Social Council had approved that text and recommended it to the General Assembly for adoption and further action. The adoption of the text constituted an important step forward in United Nations action for the protection of minorities and in standard-setting in that field.

10. Mr. EIDE, introducing his report (E/CN.4/Sub.2/1992/37), said that in considering the question of minorities it was essential to guard against hasty simplifications and to endeavour to be impartial and objective if a "Lebanonization" of the world was to be avoided. The Sub-Commission's task was to protect human rights, in particular the rights of minorities, and not to endorse ideas of ethno-nationalism, whose tragic consequences could be seen in the former Yugoslavia. It was therefore necessary to begin by defining what was meant by nationalism and ethno-nationalism.

11. The basic tenets of nationalism were, first, that nations should be defined in ethnic terms, referring to a common past history, tradition and preferably also a common language; second, nations should as far as possible have their own States, so that the society composing a State should as far as possible be congruent with the nation as defined in ethnic terms; and, third, the loyalty of members of a nation to that nation should override all other loyalties. That notion of nationalism would be referred to as ethno-nationalism. It was different from citizen nationalism, which held that everyone who lived within the State should become part of the nation. Nationalism could therefore be malignant or benign. An ideology would be described as malignant when it was likely to lead to substantial violations of human rights. The most malignant manifestation of ethno-nationalism in recent history had been fascism, particularly nazism from 1933 to 1945. There were undoubtedly also malignant forms of nationalism at work right now. Ethno-nationalism was more likely to be malignant than other forms of nationalism, but a closer inspection was required in order to assess its nature in each case.

12. The kind of nationalism at work in any given country determined the fate of minorities. The dominant feature of ethno-nationalism was to exclude, segregate or sometimes even to exploit on a basis of hierarchy; not surprisingly, the party that had ushered in apartheid in South Africa was called the Nationalist Party, and apartheid had paved the way to exclusion, segregation and exploitation. Restrictive legislation on citizenship was one feature of ethno-nationalism. On the other hand, the dominant feature of citizen nationalism, with its drive towards nation-building, was fusion, assimilation or integration. Citizen nationalism was anti-discriminatory in its basic philosophy, but its built-in tendency against pluralism could lead to policies that were perceived as discriminatory by members of minorities.

13. Neither of the two versions of nationalism existed in pure form. Usually there were combinations: ethno-nationalists might be willing to absorb some minority groups while rejecting others; the nation builders, while accepting most groups as partners in the process of fusion or assimilation, might still exclude or marginalize members of other groups, sometimes on the grounds of race or religion. Attention should therefore be paid not only to the policy of the dominant majorities or the State, but also to that of minority groups.

Some of those groups were just as ethno-nationalist, if not more so, than the majority in the State in which they lived. If their ideology was ethno-nationalistic, they were likely to pursue claims for self-determination and in doing so purge members of other ethnic groups living inside their region, in order to have a "pure" ethnic composition. That was what had led to the "ethnic cleansing" being witnessed today in the former Yugoslavia.

14. Consequently, it could not be said that there were "good" minorities on the one side and "bad" majorities on the other. He recognized that he himself had fallen victim to that kind of simplification. He had first believed that the Armenians of Nagorny Karabakh had been victims of discrimination and historical injustice and had justifiably been claiming their independence or integration with Armenia, while those opposing them had been in the wrong. On visiting the region and talking to the two parties, he had realized that matters were much more complicated than they appeared. When calling for self-determination, the Armenians of Nagorny Karabakh had rejected those not belonging to their ethnic group, and they in turn had requested protection. That situation had resulted in confrontation, massacres and an inability to communicate and reach a compromise. On both sides, moreover, those wanting to reach a compromise were often marginalized or even physically eliminated. In pursuing the right to self-determination, the Armenians of Nagorny Karabakh, who numbered about 160,000, had already caused the displacement of more than 500,000 people, creating a real risk of regional conflagration and intervention by countries such as Russia, Turkey and Iran.

15. In South Ossetia, the Ossetian majority, in pursuing their right to self-determination, had similarly forced Georgians to leave their homes, turning them into refugees. In Abkhazia, the Abkhaz minority was likewise claiming the right to self-determination. Armed confrontations had already taken place with the Georgian forces and there was a risk that the situation would soon become uncontrollable. Those examples clearly showed that it was essential to avoid a situation where any group could claim the right to self-determination, but also to ensure that the right of such groups to their own identity was guaranteed.

16. Concerning the role of non-governmental organizations, he felt that NGOs should define their functions better. While some NGOs came before the Sub-Commission to provide testimony and others embraced all human rights in their reports, some adopted a partisan policy and, without any regard for human rights in general, directly espoused the ideas and grievances of a particular group because of ethnic, religious or other affinities. The NGO community was heterogeneous and the Sub-Commission, while duly recognizing those organizations' valuable contribution, must fully appreciate the diversity of the interests at stake.

17. In his second progress report, he discussed the general issues involved in the question of minorities, considering first the problem of definitions and then, what was to his mind the more important question of possible classifications. In that connection, he drew a distinction between settled groups and recent immigrants. With regard to settled groups, he established a second distinction between persons who were accepted as citizens in the country where they resided and groups which, in spite of being residents of long standing, had not been granted citizenship. That question was

particularly relevant in the context of the dissolution of the USSR and Yugoslavia, where there was the problem of persons who had settled in good faith and were residents of long standing in a particular region but who suddenly found themselves deprived of their citizenship. On that question, which would be examined in more detail in his final report, he wished to point out that the fact of being deprived of citizenship, and therefore of the right to vote, placed the person concerned outside the democratic process, which was precisely where conflicts were resolved. Unable to participate in the democratic process, groups that were not entitled to citizenship and could not therefore discuss their problems publicly often caused an escalation of conflicts.

18. The primary aim of his study was to define a framework of analysis within which to examine the range of options open to States, which had a duty to avoid two pitfalls, separatism and denial of the right to identity of minority groups. He dealt with those questions in four sections: equality and non-discrimination in the common domain; pluralism in togetherness; pluralism by territorial subdivision; and pluralism denied: the issue of secession. On the latter point, while recognizing the existence of the right to self-determination, he felt that claims had become excessive and that the right to self-determination was being invoked in unjustified circumstances. One weakness of the international community was the absence of an international mechanism capable of determining authoritatively what claims were justified.

19. In his view, it was less important to define the rights of minorities than to provide more opportunities for resolving conflicts and thus prevent the violence that affected so many innocent people, in particular families of mixed ethnic background - and the moderates, who were often marginalized or simply eliminated. It should be borne in mind that some people were not attending the session of the Sub-Commission because they had reportedly been threatened.

20. Mr. MAXIM commended Mr. Eide on the relevance, realism and wisdom of his approach. The concept of ethno-nationalism was of particular interest and deserved to be examined in depth. He fully endorsed several of the ideas put forward, including the caution against simplistic equation of "bad" with majority and "good" with minority. He fully agreed with the principles set forth in paragraphs 114, 115 and 143 concerning the obligation of States to respect the equality of all individuals before the law and the essential character of equality with regard to the right to protection, the right to life, the right to property, the right to dignity and the right to identity. Mr. Eide's report was particularly constructive and useful and should help efforts to find ways and means of resolving the many problems confronting the international community. Some aspects of the report, might nevertheless benefit from further clarification - for example, paragraph 80, dealing with integration, and paragraph 133, which was too vague. The situation in central and eastern Europe could not, in his view, be attributed to centuries of intermittent warfare accompanied by the drawing and redrawing of borders; it was the imperialist policies of the great empires, all of which had practised division in order to rule more effectively, that were to blame. On that point, Mr. Eide should be more precise and take greater account of historical reality. He should also be clearer on the highly explosive question of the

right to self-determination, a concept that had to be examined with great rigour. He therefore requested Mr. Eide to devote more thought and research to those problems in order to shed light on all their facets.

21. With regard to Romania, he pointed out that the country was currently undergoing a very laborious process of transition towards democracy and a market economy. Although mistakes were still possible, one thing was certain: the Romanian people's will to continue along that path was irreversible and the minorities were also rallying behind that process, since everyone was affected by the problems in the same way.

22. He recalled the exemplary character of the choice made by western Europe at the end of the Second World War. Economic and social reconstruction, combined with respect for human rights, had made possible the current level of economic and democratic development. In conclusion, he warned of the danger of politicizing and exploiting the problems of minorities. In that regard, Romania had made several proposals within the CSCE framework, in particular on the drafting of a code of conduct that would govern the attitude of States towards their minorities.

23. Mr. Sachar took the Chair.

24. Mrs. PALLEY said that Mr. Eide had made the most remarkable statement she had heard in the five years she had served on the Sub-Commission. He proposed an exemplary framework for analysis, wisely pointing out the danger of overemphasizing the two concepts of self-determination and sovereignty. In that connection, she wished to draw attention to the importance of another concept, namely territorial integrity, which was all too often neglected, but had to be respected. Separatism could not be envisaged as a solution; it was an unfriendly gesture contrary to the principles of international law. Continuing efforts were needed to find a balance between Statehood and internal autonomy so that both could be safeguarded, without ever losing sight of respect for human rights.

25. Mrs. CHAVEZ congratulated Mr. Eide on the quality of his report and the very objective approach which had given him the necessary detachment to tackle issues that gave rise to heated debate. She believed that minorities had an undeniable right to preserve certain aspects of their culture and identity but wondered about the extent of the State's role in maintaining that identity. It could be argued either that the State was responsible for the cultural identity of its minorities and should therefore take positive action, or that its role should be limited to giving the various minority groups the freedom to protect their culture themselves.

26. She was disappointed to note that so few States had replied to the questionnaire prepared by Mr. Eide. In particular, she deplored the lack of response from the United States, a country that had often been considered a model of integration. It would be recalled that, in the United States, the process of integration of different groups had never been easy and that the cost of that integration had often been very high. The price of integrating Black Americans, for example, had been civil war. Immigrants from southern and eastern Europe had, for their part, taken a long time to become

integrated. In addition, the United States had more than once experienced periods of widespread xenophobia. The internment of Germans and Japanese during the Second World War bore witness to that fact.

27. Taking the United States as an example, she wished to raise the general question of the integration of minorities. There were groups in that country calling for a segregated society. Although during the 1950s and 1960s the black population had struggled for integration, some black circles today, for example, were calling for segregation in schools. It was therefore important, as Mr. Eide had emphasized, to treat the concept of self-determination with caution and to find ways of determining how far and in what cases it could be legitimately applied.

28. Mr. BOSSUYT joined his colleagues in commending Mr. Eide on his excellent report (E/CN.4/Sub.2/1992/37). The problem was highly complex and one question that had given rise to much discussion, both in the Sub-Commission and elsewhere, was the definition of minorities. He wondered first of all how important it was to define the concept of minorities, since that would necessarily involve making a distinction that was by no means unanimously accepted between civil and political rights and economic, social and cultural rights. From a strictly legal point of view, the State's duty in regard to civil and political rights and fundamental freedoms was one of abstention, each person being entitled to enjoy all such rights and freedoms regardless of whether he or she belonged to a minority, since the prohibition of discrimination was equally applicable to everyone. On the other hand, in the case of economic, social and cultural rights, which required positive action by the State to preserve the characteristics of a minority, the definition became crucial since it was important to know what minority could claim the benefits offered by the State, often at considerable cost - as, for example, with the building of schools. The question of definitions had never been solved satisfactorily, however, and it might be asked whether it really could be solved.

29. It was nevertheless essential to recognize minorities as such and that recognition was, in his view primarily, a political act. While it was difficult to define the legal criteria which might serve as the basis for such recognition, political recognition was clearly a prerequisite for any legal settlement of the problems which arose in that respect.

30. Mrs. FORERO UCROS noted with satisfaction that in his report (E/CN.4/Sub.2/1992/37) Mr. Eide gave detailed consideration to ethno-nationalism, a phenomenon that had caused an extremely worrying escalation of violence in several parts of the world. The atomization of the world now being witnessed could have very negative consequences for peace and peaceful coexistence between peoples and was not conducive to improved protection of minorities on the basis of recognition of their identity and their cultural and religious values. The self-determination of peoples must be promoted when it was justified for historical reasons and was capable of being realized by peaceful means. The goal was to establish democratic pluralism in all societies and that required States and the minorities concerned to look for peaceful, constructive and concerted solutions to the problems involving those minorities. The various solutions analysed by

Mr. Eide deserved careful study by the Sub-Commission at a time when the problems of minorities constituted a major source of concern for the international community.

31. Mrs. ATTAH shared Mr. Eide's views on several of the questions raised in his report concerning the problems of minorities. She wished, however, to point out that while for the most part minorities suffered because of majorities, in certain cases, particularly in South Africa and in some Latin American countries, the situation was exactly the opposite. Furthermore, new forms of intolerance in regard to minorities were appearing in most countries, including those like her own country, Nigeria, which had federal structures. Clearly, it was essential to continue to promote the right to self-determination within States, but making sure wherever possible that recognition of that right did not at the same time imply recognizing a right to separation. Dialogue with the minorities must therefore be encouraged to prevent that very worrying problem.

32. She also invited Mr. Eide to continue his work on the classification of minorities and, in that regard, suggested that he should consider how the concept of minorities differ from that of indigenous peoples. In addition, she supported Mr. Eide's appeal to non-governmental organizations, which were doing excellent work but must make sure that they did not allow themselves to be manipulated by groups with essentially political motivations. Lastly, as Mr. Chernichenko had already emphasized, it was essential to resolve conflicts before they led to real warfare. The Sub-Commission and the Commission must therefore respond promptly and effectively as soon as troubles of the kind mentioned by Mr. Eide occurred in the world.

33. Mr. Alfonso Martinez resumed the Chair.

34. Mr. GUISSE thanked Mr. Eide for his detailed analysis of ways and means of resolving the problems involving minorities; it helped provide a clearer idea of those problems and would undoubtedly be very useful for States and international organizations attempting to find a solution to them. Regrettably, however, the study was still confined to countries with which the author was familiar. Mr. Eide would do well in his next report to deal also with the situations in other countries and on other continents. It was certain that problems involving minorities posed a threat to the security of States and there was an increasing tendency to associate minority rights with the right to autonomy, at the expense of national sovereignty. States' concerns in that regard could lead to the marginalization of some minorities. Minorities should therefore refrain from calling for separation when that was not feasible.

35. On the other hand, he could not agree with Mr. Bossuyt's view that the concept of a minority or a people would be difficult, if not impossible, to define. Minorities had rights in the same way as other human groups. Recognition of those rights would make them subjects of international law and thus enable them to be defined. It was also inaccurate to say that a minority became a people only when it could exercise its sovereignty since there were peoples who had been recognized as such before exercising their sovereignty, as in the case of the Jewish people and the Palestinian people.

36. In conclusion, he hoped that in his next report Mr. Eide would extend his study to all countries of the world because problems involving minorities were not confined only to some regions.

37. Mr. CHERNICHENKO congratulated Mr. Eide on his very thorough analysis of the question under consideration. That analysis augured well for the quality of his final report. Concerning the right of peoples to self-determination, he failed to see how Mr. Eide could affirm in paragraph 163 of his report that the principle of self-determination was not applicable to countries occupied prior to 1945. Was that also true of Hong Kong or Macao, which had been occupied much earlier? That question could only be decided on the basis of specific data and actual circumstances. In his view, the right to self-determination did not always imply a right to secession; it comprised several aspects and there was no reason to deny a people that right because their territory had been occupied prior to 1945. The problem of separatism was not necessarily linked to the realization of the right to self-determination and no rigid rules could therefore be laid down. It should not be forgotten, moreover, that the right to self-determination could be claimed either by an entire people or by part of a people or nation living in another territory and the solution to that problem would not be the same in both cases.

38. He agreed with Mr. Eide that it was essential to achieve a balance between the right of peoples to self-determination and the principle of the territorial integrity of a State and the inviolability of its borders. However, he was concerned by the idea put forward in paragraph 165 that, apart from the three cases mentioned in the preceding paragraphs, the question of a unilateral right to self-determination was "extremely doubtful" and "overridden by the basic principle of territorial integrity". All the principles of international law certainly had to be considered as interrelated but it was not possible to contrast them or rank them in order of priority; in that respect also, he felt that Mr. Eide was being a little too categorical.

39. Mr. EIDE said that in all cases of colonization the right to self-determination could not be contested. The situation was thus different in respect of events that had occurred prior to 1945 but were linked to colonialism, and consequently the examples given by Mr. Chernichenko did not really illustrate the problem. With regard to paragraph 165, he recognized that there was a link between the principle of the right of peoples to self-determination and the principle of territorial integrity. He had merely wished to point out that, in all cases except the three already mentioned, the presumption was that no unilateral right to self-determination existed and that no other State was therefore entitled to pursue such a claim unless evidence of its justification in international law, had been given for example on the basis of a General Assembly or Security Council resolution.

40. Mr. KHALIL joined previous speakers in congratulating Mr. Eide. In his report, Mr. Eide had drawn attention to the fact that the intensification of violence in recent months in some parts of the world showed that constitutional provisions and legislative measures were not enough to resolve the problems involving minorities. Those problems were very serious and it was difficult to find peaceful or constructive solutions to them. Mr. Eide recognized that there was no universal remedy but pointed to the existence of

common underlying principles, namely the fundamental principles of international law. He gave particular emphasis to certain essential notions such as nation, State, society, group and minority, and also introduced a new concept, that of benign nationalism or citizen nationalism, which he contrasted with ethno-nationalism. His analysis of those concepts led him to conclude that the way to achieve a peaceful and constructive solution of situations involving minorities was to reject both exclusivist ethno-nationalism and enforced assimilation and to pursue ethnic, religious and linguistic pluralism, while maintaining respect for the territorial integrity and stability of States. Mr. Eide devoted the last section of his report to the crucial issue of the right to self-determination and its relationship to the principles of national sovereignty and territorial integrity. In general, his study showed that any peaceful and constructive solution to the problems of minorities must be based on the acknowledgement of universally recognized human rights and respect for the fundamental principles of international law, taking account of the requirements inherent in the structure of the international legal system.

41. Mr. AL-KHASAWNEH said that the question of the right to self-determination, and more specifically the conflict between that principle and the principle of territorial integrity, was at the heart of the subject studied by Mr. Eide. In the United Nations, the right to self-determination was interpreted restrictively as a right recognized only in respect of peoples under colonial or alien occupation. It should not be forgotten, however, that differences between ethnic groups or nationalities which had become blurred in the common struggle against colonizing and occupying forces could reappear after decolonization. The restrictive interpretation implied that groups aware of their differences might then claim the right to self-determination. That was certainly not an easy problem to solve and such a conflict of principles could lead to intractable situations.

42. For his part, he believed that the right to self-determination should be granted to all peoples, even if the exercise of that right might affect a State's territorial integrity. Why make that principle a taboo? And why should the Sub-Commission, as an expert body, be limited in its action by General Assembly resolutions adopted during the 1960s and 1970s? Solutions to certain problems were sometimes being found now at the expense of the principle of national sovereignty. Developments throughout the world should always be taken into account since, in the words of a sixteenth-century Egyptian lawyer, the wisest men were those who could best interpret their time.

43. Mr. ULLMANN (Coordinating Board of Jewish Organizations) said that few aspects of the work of the United Nations were of such vital importance today as the prevention of discrimination and the protection of minorities worldwide, since the problem of minorities was a burning issue. The end of the cold war and the improvement of relations between the great Powers had unfortunately unleashed a wave of xenophobic sentiments and peoples were therefore impatient to see the General Assembly adopt the draft declaration on the rights of minorities at its next session.

44. As victims or descendants of victims of the Holocaust, the members of his organization were particularly anxious about the events now taking place in

the former Yugoslavia, which reminded them of the horrors of the Nazi era. Besides tackling the problem of a final settlement of the territorial issues involved, his organization was convinced that the international community must pursue for as long as necessary all the humanitarian measures and measures of deterrence already taken and make every effort to put an end to such inhuman situations using all means available to the United Nations, in order to hold out hope at the International Conference and the special session of the General Assembly on the question. Not even cemeteries had been spared by the violence and he urged that they should all be placed under international protection so that they would not be desecrated.

45. Minorities and in particular migrant workers were constantly exposed to the racism and xenophobia of neo-Nazi and extremist groups which sought to justify violence on the basis of racial, ethnic, religious or linguistic differences. It was unacceptable that such behaviour should be allowed in a country governed by the rule of law and that Nazi war criminals like Alois Brunner should still be free. The Coordinating Board of Jewish Organizations was alarmed to see that neo-Nazi video games with Jews in concentration camps as targets were still on sale and that revisionism, a perverse component of anti-Semitism, was on the increase. It deplored the fact that anti-Semitism was seldom identified in reports as a form of discrimination against a minority. He hoped that the international community would find a solution quickly to the urgent problems he had just raised.

46. Mr. BALIAN (Human Rights Advocates) said that he wished to protest against simplistic explanations attributing the conflicts now taking place in the former Yugoslavia to the fact that some peoples were exercising their right to self-determination. That view failed to take into account the root causes of present-day ethnic conflicts. Superficial explanations which ascribed the desire for self-determination to tribal impulses and assertions that self-determination did not create peaceful relations showed a complete misunderstanding of the right to self-determination. Such simplistic interpretations paved the way for violence against minorities, which threatened their very existence, on the pretext that their claims to self-determination were excessive and their demands for redress were expressions of an extreme form of nationalism.

47. Mr. Eide's report was extremely cautious on the subject of the right to self-determination. However, in paragraph 165, it did recognize that while a unilateral right to self-determination was extremely doubtful, the question of the right to self-determination of the different components became more pertinent when the State ceased to respect the principle of equal rights and the Government did not represent the whole people of the territory.

48. The report also had several weaknesses that Mr. Eide should remedy in his final report. First of all, it referred to a vaguely defined ethno-nationalism but Mr. Eide did not say what situations or violations of human rights had caused it; instead, he preferred a status quo, even to the detriment of long-term peace. Furthermore, in paragraph 38, Mr. Eide listed five categories of problems facing minorities. A notable omission from that list was threats by a dominant majority against the right of a minority to exist as such, including deportations, massacres and so on. Paragraph 39 spoke of between 5,000 and 6,000 ethnic groups which might threaten the

international legal order of sovereign States. In paragraphs 40 and 41, Mr. Eide said that there were minorities which "pursue extremely provocative and dangerous policies" or "sometimes generate a self-fulfilling prophecy of extensive violations of human rights by the other side". The latter two statements, in his view, were theories that could provide excuses for Governments to shift the blame and continue to abuse the rights of minorities. Lastly, paragraph 164 contained a serious error: Mr. Eide described the former Soviet Union as a "voluntary arrangement". It was difficult to see how that term could be applied to the Baltic States and the Caucasus republics.

49. In conclusion, he hoped that in his final report Mr. Eide would not confine himself to recommending measures to preserve the existing world order and the territorial integrity of States, but would propose alternative methods of conflict resolution or management. In that regard, non-governmental organizations had every interest in responding to Mr. Eide's invitation with a view to remedying some of the shortcomings that had been highlighted.

50. Mr. SACHAR welcomed Mr. Eide's clear presentation of the conflict between the theory of self-determination and protection of the rights of minorities. In his view, the right of minorities to be protected did not imply a right to secession. The right to self-determination had, indeed, been applicable in colonial times. Continuing to claim that right to the detriment of the integrity of a territory was a highly dangerous practice, however, since there was no longer any territory where minorities were totally absent. It therefore had to be asked what criteria - number, land area, importance - could be used to decide whether a particular minority was entitled to claim the right to have its own separate territory. That was an important issue and it was as well that it had been clearly presented, because a large number of countries - some of which were threatened with disintegration - would apparently now have to face that problem.

51. The protection to which minorities were entitled was quite another matter. He believed that, as in India, the right of minorities to their own language, culture and religion had to be embodied in the Constitution and must also be justiciable. If their rights were not protected, minorities risked assimilation, and that was unacceptable. In that connection, Mr. Eide should perhaps not have used the word "assimilation" when referring to integration of minorities because, as an integral part of a State, a minority that was properly protected had the right to speak its own language and live according to its own culture, and therefore was not, strictly speaking, "assimilated".

52. Regarding the comments made by Mr. Chernichenko, who had felt that Mr. Eide was being too categorical in stating in paragraph 165 of his report that territorial integrity was the overriding principle, he pointed out that there were more than 5,000 ethnic groups in the world and he found it difficult to imagine the United Nations with such a large membership.

53. Turning to the various arrangements for minorities outlined by Mrs. Palley, to which Mr. Eide made reference in paragraph 145 of his report, he said that they were acceptable in general, with the exception of those involving the allocation of communal seats in fixed proportions, even when there was common voting, since the only option in such cases would be to vote for one's own group. Proportional representation, moreover, was of real

interest only in cases where minorities were concentrated in one place. He favoured a different suggestion, that of decentralizing political power, particularly in so far as the allocation of income and expenditure was concerned. If peoples could participate in decision-making in that respect - at the district level, for example - spending would be more in line with their needs; where decisions were taken by the central bodies, on the other hand, the voice of the majority outweighed that of the minorities.

54. Lastly, the right to self-determination, in his view, could be exercised only in a colonial context. Encouraging claims for self-determination was a game that more than one State could play and it would be dangerous for any State to embark on such a course.

55. Mrs. PALLEY wondered whether Mr. Sachar had actually read the report cited by Mr. Eide (Minority Rights Group Report No. 36, 1978). She had not advocated any particular form of representation for minorities, but had simply catalogued the various solutions adopted in the course of history and had even included critical comments on the effects of communal electoral rolls, a system that fostered a rather narrow-minded attitude in communities. She had certainly not recommended adopting that system.

56. Mr. UL-HAKIM said that, in his view, Mr. Eide's report was excellent and constituted a real attempt to improve the situation of minorities. That, indeed, was the goal of the Sub-Commission. It should be pointed out that the question of minorities was a relatively recent issue in history and was linked to the concept of the nation that had developed mainly after the Second World War, when the number of nations had increased to more than 100. Mr. Eide had admitted in his oral presentation that it was difficult to distinguish exactly between what constituted a nation and what constituted a minority since the world today was made up of separate States.

57. Concerning the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, which Mr. Eide wished to be recommended to the Economic and Social Council and to the General Assembly for adoption, he had a few criticisms to make. Article 4, paragraph 3, would stipulate that States should take appropriate measures so that persons belonging to minorities had the opportunity to learn or receive instruction in their mother tongue. That was certainly essential to improve the situation of minorities, but he wondered what would happen thereafter. Even the richest countries did not have the means to provide for those minorities which, once the declaration had been adopted, might call for instruction in medicine, physics or chemistry in their mother tongue. It should therefore be made clear in the paragraph that that would be done "wherever possible". Article 4, paragraph 5, was also open to question. The minorities in his country, Bangladesh, had been able to participate fully in the economic progress and development of their country and other countries only when they had been able to attend schools providing a general education and not a specific education for the minority concerned. Pressures for children belonging to minorities to attend their own schools were in his view dangerous for the future. Mr. Eide's report nevertheless deserved to be elaborated in greater depth with a view to improving the situation of minorities.

58. Mrs. KSENTINI commended Mr. Eide for having embarked on a study dealing with the very difficult and sensitive question of minorities without sidestepping the dilemmas which arose concerning the principle of the right to self-determination and the distinction between nations and minorities and between indigenous peoples and minorities. The case of immigrants, in her view, should also be studied in greater depth.

59. Mr. SACHAR, referring to Mr. Ul-Hakim's comments, said that in his country, India, teaching in the mother tongue was not intended to continue to the university level. However, schools at all levels were required to make sure that the teaching they provided was in compliance with the standards laid down for education in general.

The meeting rose at 1 p.m.